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United States of America  
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9 IN THE UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,  
12  
13 Plaintiff,  
14  
15 v.  
16 OBDULIO JIMÉNEZ,  
DANIEL JOE BOBIAN,  
JOSE MANUEL AGUILERA BARBOSA,  
Defendants.

CASE NO. 2:20-CR-35-JAM

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
FINDINGS AND ORDER

DATE: June 23, 2020  
TIME: 9:15 a.m.  
COURT: Hon. John A. Mendez

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18 This case was set for a status conference on June 23, 2020. The parties now move to continue  
19 the status conference to September 22, 2020 at 9:15 a.m., and requests the Court to exclude time under  
20 Local Code T4 as well as for public health and safety reasons under the Court's recent General Orders,  
21 for the reasons set forth below.

22 On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the  
23 Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to  
24 continue all criminal matters to a date after June 1. This and previous General Orders were entered to  
25 address public health concerns related to COVID-19.

26 Although the General Orders address the district-wide health concern, the Supreme Court has  
27 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive  
28 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.

1 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
 2 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 3 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 4 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 5 or in writing”).

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 7 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice  
 8 continuances are excludable only if “the judge granted such continuance on the basis of his findings that  
 9 the ends of justice served by taking such action outweigh the best interest of the public and the  
 10 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless  
 11 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the  
 12 ends of justice served by the granting of such continuance outweigh the best interests of the public and  
 13 the defendant in a speedy trial.” *Id.*

14 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 15 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 16 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 17 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 18 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 19 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*  
 20 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the  
 21 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a  
 22 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

23 In light of the societal context created by the foregoing, this Court should consider the following  
 24 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
 25 justice exception, § 3161(h)(7) (Local Code T4).<sup>1</sup> The parties note that the Court has already  
 26 designated a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir.

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 28 <sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make  
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
 Cal. March 18, 2020).

2010) (noting any pretrial continuance must be “specifically limited in time”).

**STIPULATION**

Plaintiff United States of America, by and through its counsel of record, and defendants Obdulio JIMÉNEZ and Daniel Joe BOBIAN, by and through their counsel of record, hereby stipulate as follows:

1. The undersigned defendants now move to exclude time between June 23, 2020, and September 22, 2020, per Local Code T4, in addition to the exclusion of time the Court has already ordered in light of public health concerns cited by General Order 611, 612, and 617. Defendant Jose Manuel Aguilera BARBOSA has not yet appeared in this matter, and therefore does not join in this stipulation.

2. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that it is in the process of producing discovery associated with this case, includes law enforcement reports, photographs, as well as investigative reports. All of this discovery will be either produced directly to counsel or made available for inspection and copying.

b) Counsel for defendants will need time to consult with their clients, review discovery, investigate evidence and potential defense strategies, and otherwise prepare for trial.

c) Counsel for the defendants believe that failure to grant the above-requested continuance would deny them the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government does not object to the continuance.

e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendants in a trial within the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of June 23, 2020 to September 22, 2020, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant’s request on the basis of the Court’s finding that the ends of justice served by taking such action outweigh the best

1 interest of the public and the defendant in a speedy trial.

2 3. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
3 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
4 must commence.

5 IT IS SO STIPULATED.

6 Dated: June 18, 2020

McGREGOR W. SCOTT  
United States Attorney

7 /s/ JAMES R. CONOLLY  
8 JAMES R. CONOLLY  
Assistant United States Attorney

9  
10 Dated: June 18, 2020

/s/ JENNIFER MOUZIS  
JENNIFER MOUZIS  
Counsel for Defendant  
DANIEL JOE BOBIAN

11  
12  
13 Dated: June 18, 2020

/s/ STEFAN E. SACKS  
STEFAN E. SACKS  
Counsel for Defendant  
OBDULIO JIMÉNEZ

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18 **FINDINGS AND ORDER**

19 IT IS SO FOUND AND ORDERED this 19<sup>th</sup> day of June, 2020

20  
21 /s/ John A. Mendez  
22 THE HONORABLE JOHN A. MENDEZ  
23 UNITED STATES DISTRICT COURT JUDGE  
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